

ALEXANDER CROSS.

[To accompany Bill H. R. No. 808.]

JUNE 4, 1860.

Mr. TAPPAN, from the Committee of Claims, submitted the following

REPORT.

*The Committee of Claims, to whom was referred the claim of Alexander Cross, beg leave to report :*

That Alexander Cross, on the 14th of November, A. D. 1856, filed his petition in the Court of Claims against the United States, alleging that at the date of filing his petition there were due to him from the United States, as the assignee of one Daniel Saffarans, thirty-nine monthly instalments of rent, of fifteen hundred dollars each, with interest, on a lease given by said Saffarans to the United States, for custom-house purposes, of a fire-proof iron warehouse in the city of San Francisco.

The case comes before the House on the report of the Court of Claims.

The material facts are as follows :

Congress, by a joint resolution of the date of the 14th of February, 1850, among other things therein provided for, gave authority to the Secretary of the Treasury to lease such houses at his discretion as might be necessary for storage of unclaimed goods, or goods which, for any other reason, are required by law to be stored by the government.—(Statutes at Large, vol. ix, pp. 560, 561.)

Under the authority of that resolution, T. Butler King, as collector of the port of San Francisco, on the 11th of November, 1850, entered into a contract under seal, for and in behalf of the United States, with one Daniel Saffarans, of Tennessee, by which it was agreed the government should rent of said Saffarans, for custom-house purposes, a fire-proof iron warehouse in San Francisco, of the description and dimensions therein specified, for the term of ten years from the day when possession thereof should be delivered to the collector, at the rent of fifteen hundred dollars per month, payable monthly.

Thomas Corwin, the then Secretary of the Treasury, indorsed upon this lease his approval of it, on condition that it should not take effect until said King should examine the warehouse and accept it as being substantially of the character, description, and dimensions specified in and required by the contract.—(Vide printed report of Court of Claims, No. 198, 2d sess. 35th Cong., pp. 11, 12.)

King examined the warehouse, accepted and took possession of it on the 14th of January, 1851, from which time the rent commenced.—(*Vide* said report, p. 13, and King's deposition, p. 57.)

On the 10th of July, 1851, Saffarans sold and assigned under seal the lease to Alexander Cross, "with all the rights, rents, and interest which had accrued or might accrue," under and in virtue of it, and authorized Cross to receive all such rents.—(*Vide* said report, p. 13.)

When the lease, with the assignment, was delivered to Cross, King, as collector of the port of San Francisco, indorsed on it his official recognition and acceptance of Cross as the landlord of the government.—(*Vide* report, p. 13.) Mr. King, in his deposition taken in the case, says he made that indorsement on Cross's becoming the assignee of the lease.—(*Vide* report, pp. 57, 58.)

The monthly rents were thereafter paid to Cross until the 13th of August, 1853, (twenty-three months,) when the collector of San Francisco, under instructions from Mr. Secretary Guthrie, abandoned the building, and notified Cross that the government would pay no more rent. Cross, in reply, notified the collector that he did not recognize the right of the Secretary to rescind the contract, and that he should claim payment of the rent until the expiration of the term for which the building was leased.—(*Vide* said report, p. 16.)

The Secretary's letter of instructions to the collector bears date April 12, 1853.—(*Vide* report, pp. 86, 87.) In that letter he refers to certain acts of Congress giving authority to the collector to rent stores or warehouses for custom-house purposes, and says there are no other acts giving that authority; and that, in his opinion, these acts conferred no authority to make the contract with Saffarans, and that it and other leases with other parties named by him were, for that reason, void, and not binding on the United States. And on that ground, and on that alone, he instructed the collector to abandon the buildings and give notice to the lessors that the leases were held to be void, and that rents would be no longer paid for the buildings. The Secretary's letter contains no reference to the joint resolution of February 14, 1850, (9 Stat. at Large, pp. 560, 561;) and as he stated there were no other acts of Congress giving authority to lease such buildings except those referred to by him, we are enabled to know with certainty that he overlooked that resolution. The lease with Saffarans was made under that resolution, which, as before stated, expressly authorized the Secretary of the Treasury to lease such houses at his discretion as might be necessary for the storage of unclaimed goods, or goods which for any reason are required by law to be stored by the government. If that resolution had fallen under the notice of the Secretary, we are of opinion he could not have come to the conclusion that the lease was void for want of authority to make it, and given instructions to abandon the building for that reason.

In the case of Theodore Adams against the United States, the Court of Claims expressly held that this resolution gave authority for the making of such leases as that now in question; and in their opinions, delivered in the case of Cross, none of the judges of that court call in question the validity of Saffarans's lease to the United States.

In the opinion pronounced by Judge Scarburgh, reference is made to this oversight of the Secretary, and to the decision of that question

in the case of Theodore Adams.—(*Vide* report, pp. 105, 106.) That learned judge, after stating the facts in Cross's case, says: "I am of the opinion that the lease from Daniel Saffarans to the United States is valid, as a lease to them of the warehouse, for ten years, at the rent of fifteen hundred dollars a month, payable monthly; and that the United States are liable and bound to pay to whomsoever may be legally entitled thereto the rent, from the 13th of August, 1853, till the 13th of January, 1861, when the term will expire, subject to a deduction for such profits as have been or may be reasonably realized therefrom."—(*Vide* report, p. 108.)

A decision adverse to the claim of Cross was made by that court, on the sole ground that there was a legal informality in the execution of the assignment from Saffarans to Cross. We do not deem it necessary to go into an explanation or discussion of that point of law, nor to express an opinion whether the court were technically right or wrong in the conclusion they came to respecting it. We think it sufficient that the Treasury Department, whose duty it was to see that the assignment was properly made before accepting Cross as the landlord of the government, have always recognized, and never called in question, the assignment; that the government paid to Cross, as landlord, twenty-three monthly instalments of rent; that when the lease was at last repudiated on the ground that it was void, for the reason stated above, and not on account of any informality in the execution of the assignment, notice of it was given to Cross as the owner of the lease, and not to Saffarans, as it should have been, if the assignment was called in question; that Daniel Saffarans lived more than seven years after the assignment, and never called it in question, nor set up a claim to the rent, nor have his representatives done so since his death; and also for the further reason, that since the report on this case by the Court of Claims was made to Congress, the deposition of Isaac Saffarans has been taken—a son of Daniel Saffarans—who acted as the agent for his father in making the assignment and transacting the business, which wholly removes any question that might before have existed in respect to the validity and binding effect of the assignment.

The rent of the building, from the 13th of August, 1853, to the 14th of November, 1856, when Cross filed his petition in the Court of Claims, amounts to the sum of fifty-eight thousand five hundred dollars. The testimony shows that the government is entitled to a credit of fourteen thousand eight hundred and ninety-two dollars thirty-seven cents, for money received for rents and storage of goods in the building during that period of time, (*vide* report, pp. 53, 67, 68,) leaving a balance on the 14th of November, 1856, of forty-three thousand six hundred and seven dollars sixty-three cents. We have therefore reported a bill for that sum, without interest, and recommend its passage.

